#### **BEFORE**

## THE PUBLIC SERVICE COMMISSION OF

#### SOUTH CAROLINA

DOCKET NO. 2003-162-T - ORDER NO. 2003-550

### SEPTEMBER 8, 2003

IN RE: Application of Coastal Moving & Storage, Inc., 110 Bombay Drive, Columbia, SC 29209 (Mailing address: Post Office Box 23294, Savannah, GA 31403) for a Class E Certificate of Public Convenience and Necessity to Transport Household Goods

- ORDER DISMISSING
- ) PETITIONS TO
  - INTERVENE, RULING
- ) MOTION TO COMPEL
- ) MOOT, AND GRANTING
  - MOTION FOR LEAVE
- ) TO TAKE TELEPHONE
- ) DEPOSITION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion to Dismiss the Petitions to Intervene Based on the Unauthorized Practice of Law, a Motion for Leave To Take a Telephone Deposition, and a Motion to Compel filed by counsel on behalf of Coastal Moving & Storage, Inc. (Coastal). For the reasons stated herein, we grant Coastal's Motion to Dismiss the Petitions to Intervene and Motion for Leave to Take a Telephone Deposition. By granting the Motion to Dismiss, Coastal's Motion to Compel is moot.

# <u>DISCUSSION AND DISPOSITION OF MOTION TO DISMISS PETITIONS TO</u> INTERVENE

In its Motion to Dismiss, Coastal requests that the Commission dismiss the Petitions to Intervene of Carey Moving & Storage of Greenville, Inc., Carey Moving & Storage, Inc., and Carey Moving & Storage of Charlotte, Inc. (Intervenors) on the grounds that the Intervenors are engaging in the unauthorized practice of law.

Carey Moving & Storage of Charlotte, Inc. (Carey-Charlotte) filed a petition to intervene, which was signed by Alan Spatz, General Manager of Carey-Charlotte, in this docket on or about July 10, 2003. On or about July 9, 2003, a petition to intervene signed by P.A. Carey, President of Carey Moving & Storage, Inc. was filed on behalf of Carey Moving & Storage, Inc. (Carey-Inc.) Carey Moving & Storage of Greenville, Inc. (Carey-Greenville) filed a petition to intervene in this docket on or about July 9, 2003 and this petition to intervene was signed by M.A. Carey of Carey-Greenville.

The Motion to Dismiss indicates that counsel for Coastal received identical "Interrogatories Set No. 1 & Propounded to Coastal Moving & Storage, Inc." on August 26, 2003, from each of the Carey companies. Carey-Inc.'s interrogatories were signed by P.A. Carey. Michael A. Carey of Carey-Greenville signed the interrogatories of Carey-Greenville and Alan Spatz signed the interrogatories of Carey-Charlotte.

Coastal argues that M.A. Carey, P.A. Carey, and Alan Spatz have engaged in the unauthorized practice of law by filing petitions to intervene, interrogatories, and answers to interrogatories in the Coastal application. In the case of <u>In Re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar</u>, 309 S. C. 304, 422 S.E. 2d 123 (S. Ct. 1992) the Supreme Court held the following:

State agencies may, by regulation<sup>1</sup>, authorize persons not licensed to practice law in South Carolina, including laypersons, Certified Public Accountants (CPAs), attorneys licensed in other jurisdictions and persons possessing Limited Certificates of Admission, to appear and represent clients before the agency. These regulations are presumptively valid and acts done in compliance with the regulations are presumptively not the

<sup>&</sup>lt;sup>1</sup> A copy of the proposed regulation shall be filed with the Supreme Court Clerk at the same time it is filed with the Legislative Council.

unauthorized practice of law. We recognize, however, that such an agency practice could be abused, and reserve the authority to declare unenforceable any regulation which results in injury to the public.

Coastal argues that the Commission has not issued regulations authorizing laypersons to appear and represent clients before the agency. The Motion to Dismiss indicates that Coastal received a letter from the Executive Director of the Commission expressly prohibiting such representation. Further, Coastal cites the Commission's regulations which state that if a party is not an individual, an attorney authorized to practice law in South Carolina may represent the party. Coastal also cites <a href="State v.">State v.</a>
<a href="Despain">Despain</a>, 319 S.C. 317, 460 S.E. 2d 576, 578 (S. Ct. 1995) wherein the Supreme Court held that the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions is the "practice of law."

M.A. Carey, P.A. Carey, and Alan Spatz are not attorneys, therefore Coastal argues that their signing and filing of the petitions, interrogatories, and answers to interrogatories are in violation of South Carolina law and constitute the unauthorized practice of law.

We agree with Coastal that the Petitions to Intervene of Carey Moving & Storage of Greenville, Inc., Carey Moving & Storage, Inc. and Carey Moving & Storage of Charlotte, Inc. should be dismissed. The Petitions to Intervene were signed by persons who are not attorneys. The South Carolina Public Service Commission has not, by regulation, authorized persons not licensed to practice law in South Carolina, to appear and represent clients before the Commission. The "practice of law embraces the preparation of pleadings, and other papers incident to actions and special

proceedings...." See <u>State v. Despain</u>, 460 S.E. 2d 576, 577-8 (S. Ct. 1995). A pleading includes a "petition" as defined by 26 S.C. Code Ann. Regs. 103-804(F). Therefore, Petitions to Intervene, which are filed on behalf of someone other than an individual, must be signed by an attorney.

## DISCUSSION AND DISPOSITION OF MOTION TO COMPEL

Coastal also moved, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, 26 S.C. Code Ann. Regs. 103-854 and other applicable rules of practice and procedure of the Commission that the Intervenors be compelled to respond to Coastal's Request for Production and to comply with the Commission's rules and regulations concerning discovery responses.

We have granted, in this Order, Coastal's Motion to Dismiss the Petitions to Intervene of the Intervenors in this docket. Therefore, there is not a reason to address Coastal's Motion to Compel as this Motion is moot.

# DISCUSSION AND DISPOSITION OF COASTAL'S MOTION FOR LEAVE TO TAKE A TELEPHONE DEPOSITION

Pursuant to Rules 30 and 32 of the South Carolina Rules of Civil Procedure and 26 S.C. Code Ann. Regs. 103-852, and other applicable rules and regulations of the Commission, Coastal requests leave to take the testimony of James L. Whitmire. Mr. Whitmire is the Chief, Southeast Regional Storage Management Office. Coastal requests permission to depose Mr. Whitmire by telephone on Thursday, September 4, 2003, at 2:30 p.m. at the Southeast Regional Storage Management Office, 4698 North 2<sup>nd</sup>, Forest Park, Georgia.

The Motion for Leave to Take a Telephone Deposition will be upon oral examination by telephone pursuant to Rule 30(b)(7), South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions, to be recorded stenographically and to continue from day to day until completed. Mr. Whitmire will testify regarding the federal government's basic order agreements for the storage and shipment of household goods for military personnel. He will also testify as to Coastal's operations in Georgia transporting and storing household goods for military personnel. The Motion for Leave to Take a Telephone Deposition indicates that Mr. Whitmire is at a greater distance than 100 miles from the place of the hearing and is scheduled to be at Headquarters in Washington, D. C. on September 10, 2003. The hearing in the instant docket is scheduled to be held September 10, 2003, at 10:30 a.m.

We grant Coastal's request to take the telephone deposition of Mr. Whitmire and to use the deposition in the hearing scheduled for September 10, 2003. The Motion indicates that Mr. Whitmire will be at a greater distance than 100 miles from the place of hearing; therefore, good cause has been established to allow the deposition of Mr. Whitmire to be used at the September 10, 2003, hearing.

### IT IS THEREFORE ORDERED THAT:

- 1. The Motion to Dismiss the Petitions to Intervene in this docket is granted.
- 2. The Motion to Compel is moot.

3. The Motion for Leave to Take the Deposition of Mr. Whitmire and allow Coastal to use the deposition of Mr. Whitmire in the hearing scheduled for September 10, 2003, is granted.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director

(SEAL)